

From: Theodore A Isabella
To: Microsoft ATR
Date: 1/24/02 10:22am
Subject: Comments for the public record DOJ v Microsoft

To the Honorable Kollar Kotelly and Renata Hesse,

Attached is a Microsoft Word document containing my comments concerning the DOJ v Microsoft case. Please advise if this is acceptable (to submit as an attachment). Otherwise I can submit any way you prefer.

Regards,
Theodore A Isabella

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To: The Honorable Kollar Kotelly

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Subj: Comments for the public record US DOJ v Microsoft

To the Honorable Kollar Kotelly,

January 24, 2001

I appreciate this opportunity to submit my thoughts and comments concerning the Department of Justice's Anti-Trust case against Microsoft. I was motivated to write after reading recent rulings in the DOJ v Microsoft case. I realize what I am about to say may be described as "closing the barn door after the horse got out." Yet, I ask for your patience and indulgence as you listen to my comments, for that kindness I thank you in advance.

Who am I to comment on such a case? And, what qualifications, if any, do I bring to the debate? Both are fair and reasonable questions to ask. I am a multi-system technology professional, adapt inside of the Microsoft technology world and outside of it as well. I am well trained enough to make a living as an Independent Consultant and have been doing so since the mid 1990's. In addition, my total experience in the technology profession dates back to 1972. It's my belief I have the necessary background and life experience to understand these recent rulings within the context of the law as well as the industry I've been privileged to work in these last 30 years.

When we compare this case to the one that established the benchmark (Standard Oil) for Anti-Trust legislation we do not see the logical components to support the DOJ's position (to take Anti-Trust action against Microsoft.) By this I mean, in the Standard Oil case it was clear behavior by Standard Oil impeded competition and hindered the free market system; by the direct result of actions taken by Standard Oil the consumer was put at risk, e.g., by the effective blocking of competition from the well-head, through production, to the gas pump, the consumer could not benefit by the free-market. It is clear that Microsoft does not, nor did it ever, have this kind of control over the free market. Hence, my first point is, this case does meet the test for Anti-Trust action.

This leads me to my second point – **who benefits from any Anti-Trust ruling** against Microsoft? I believe any Anti-Trust ruling against Microsoft actually promotes the kind of behavior we intend to stifle via Anti-Trust legislation. How so? It's my belief that the companies who helped initiate the legal action are being rewarded for bad business practices. What am I talking about?

Business decisions. Here is where my experience and technical background forces me to disagree with any ruling that subscribes to the notion that Microsoft is a monopoly. The primary reason for Microsoft's success has more to do with others' poor business decisions than anything else. The idea that there are insufficient resources available for the free-market to produce a remedy is false – it is simply untrue. Companies like Apple, IBM, Compaq, HP, and Dell, to name a few, have the capacity to produce a competitive Desktop Operating System and roll it out within a year. That's correct, I said **one year**. How is this so?

- Apple Computer Corporation: had, at one point, an x86 project that ported the Mac OS to the x86 chip. Though it was already in Beta but for "business" reasons Steve Jobs killed the project. Another interesting *business decision* by Apple was the pulling of the Mac clone licenses. One of its major vendors, a company called PowerComputing, was starting to roll out Mac clones with a newly developed OS called the BeOs. The BeOs was designed to run on multiple CPU architectures, i.e., both the x86 and the Apple PowerPC chip. Question, why did Apple pull the license? Answer, a business decision. Using the DOJ's logic, could this not be construed as Anti-Trust behavior, stifling competition for the PowerPC chip?
- IBM and OS2Warp. Clearly IBM is a company that has the financial resources to go toe-to-toe with Microsoft and did not, why? Consider its joint venture with Apple and Motorola that produced the next generation CPU, the PowerPC chip. A Swedish technical team ported the Mac OS to IBM's RS-6000 computer system, and did it in 6 months! So we know from experience that IBM can roll out a competitive OS that will run on multiple CPU architecture in a relatively short period of time. Additionally, IBM already has an OS that runs on the x86 chip, it's called OS2. Why not ask IBM, who, with its R&D clout and a true 32 bit OS already in production, how come it abandoned the Desktop OS arena? Answer, business decision.
- Windows is not a dominant OS. The Windows Operating System may be the dominant Operating System (OS) in the United States, however, depending on which country you are in it may not be. For example, in Canada the Macintosh OS has a dominant footprint in the business community, as it does in Europe and the Asian-Pacific basin. Apple, after-all, is a multi-billion dollar a year company, someone, somewhere, is buying its Mac OS over the Microsoft OS.

The aforementioned are only a couple of examples of many. I could site similar stories for companies like Sun, Compaq, HP, and of course what about the hardware vendors like Dell who have the financial resources to port already existing OS's to their platforms. The question begged by my examples is why not? The answer is simple, "business decision." And therein lies my concern; any Anti-Trust ruling against Microsoft actually rewards these companies for making bad decisions that have negatively impacted the consumer.

When one examines the facts, looks at the benchmark for Anti-Trust, one is forced to conclude that the DOJ's case against Microsoft has been at the outset an effort to reward those, who for their own personal business reasons, refused to compete in the free-market system, which of course, is their choice, however, I argue we ought not to reward that kind of behavior. I respectfully submit that the DOJ's Anti-Trust case against Microsoft should be dismissed.

Thank you for this opportunity to share my thoughts, I remain,

Sincerely yours,

Theodore A Isabella